The Report of the Committee Reviewing THE CHILD WELFARE ACT

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Manitoba
Community
Services

REPORT OF THE COMMITTEE REVIEWING

THE CHILD WELFARE ACT

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INTRODUCTION

The Committee reviewing The Child Welfare Act was appointed in March 1982 to assess, modernize and improve Manitoba's child welfare legislation. In accomplishing this task, judicial decisions and legislation from other jurisdictions were reviewed, and more than fifty briefs were solicited and considered.

Regular meetings of the Committee as a whole and its various subcommittees were held. Most decisions were arrived at through informal concensus, with only a few requiring a formal majority vote. The Committee also consulted widely with various human service agencies and with the Attorney-General's Department.

The final report of the Committee is in the form of a proposed Child and Family Services Act to replace the current Child Welfare Act.

COMPOSITION

The Committee was comprised of 11 representatives of the child welfare system of Manitoba and 3 representatives of the Attorney General's Department.

Roman L. Hlynka	Chairman, former Deputy Director of Child Welfare
Ken Maskiw, replaced by Ernie Hasiuk	Child and Family Support
Dave L. Schellenberg	Children's Aid Society of Winnipeg
James L. Dubray	Children's Aid Society of Central Manitoba
Aleda Turnbull, replaced by Keith Garvie	Children's Aid Society of Eastern Manitoba
Bruce Fraser	Children's Aid Society of Western Manitoba
Shirley Chase	Winnipeg Region of Manitoba Community Services
Bruce Unfried	Norman & Thompson Region of Manitoba Community Services

John Gow	Parklands, Interlake and Eastman Regions of Manitoba Community Services
Tim Maloney	Dakota Ojibway Child and Family Services
Esther Seidl, replaced by Sharon Taylor-Henley	First Nations Confederacy
Robyn M. Diamond	Child Welfare, Family Law and Maintenance Section of the Attorney General's Department
Robin P. Winters, replaced by Gail E. Mildren	Child Welfare, Family Law and Maintenance Section of the Attorney-General's Department
Greg Yost	Statutes Branch of the Attorney-General's Department

Secretaries of the Committee were:

Robin P. Winters to October 1982
Bruce Unfried from November 1982

In addition Vic Savino, attorney representing First Nations Confederacy, Dakota Ojibway Child and Family Services, Sagkeeng Child and Family Services, South East Child and Family Services, West Region Tribal Council Child and Family Services and Awasis Agency of Northern Manitoba was invited to join the Committee's deliberations on several occasions.

Resource Persons to the Committee were:

Aleda Turnbull
Reg Alcock
John Chudzik
Helen Fearn
Sophie Kolt

THE PROPOSED

CHILD AND FAMILY SERVICES ACT

Declaration of Principles

It is hereby recognized and declared that:

1. The family is the basic unit of society and its well-being should be supported and preserved.

2. Family is the basic source of care, nurture and acculturation of children and that parents have the primary responsibility to ensure the well-being of their children.

3. A fundamental responsibility of society is to ensure the best interests of children.

4. The basic rights and freedoms of children and families include the rights to the least invasion of privacy and to the least interference with freedom that is compatible with their own interests and those of society. This includes the right to the support and enhancement of a continuous family environment in which a family-child relationship and child development can flourish.

5. Where the rights of families and children are affected by this Act they are entitled to be informed of those rights and to participate in the process leading to decisions under this Act.

6. Families are entitled to receive accessible preventive and supportive services directed to preserve the family unit.

7. Families should receive services which respect cultural and linguistic heritage.

8. Decisions of removal or placement of children are to be based on the best interests of the child and not on the basis of the families' financial status.

9. Communities are entitled to participate in services to children and families.

Definitions

1. In this Act

(a) "Abuse" means an act or commission by a parent, guardian or a person in whose care the child is which results in

(i) physical injury to the child;

(ii) emotional disability of a permanent nature in the child or is likely to result in such a disability; or

(iii) sexual exploitation of the child with or without the child's consent.

(b) "agency" means

(i) a child and family services agency incorporated under this Act; and

(ii) a regional office of the department of the executive government of the province of which the minister charged with the administration of this Act is the chief administrative officer;

(c) "child" means a person under the age of majority;

(d) "day care" means the provision of care to a child apart from his parents in a place licensed for this purpose and for such periods of time and under such conditions as may be specified in the regulations;

(e) "director" means the Director of Child and Family Services appointed under this Act;

(f) "director of psychiatric services" means the Director of Psychiatric Services referred to in The Mental Health Act;

(g) "family" means parent, step-parent, siblings, grandparent, aunt, uncle, cousin, guardian, person in loco parentis to a child and a spouse or common-law spouse of such persons and includes any person within the child's extended family.

(h) "family court" means a Provincial Court (Family Division) or the Family Division of the Court of Queen's Bench;

(i) "foster home" means a home other than the parental home of a child, in which the child is placed by an agency for care and supervision but not for the purpose of adoption;

(j) "group home" means a home where not less than 4 or more than 8 children are placed by an agency for full time care and supervision in a family-like setting;

(k "guardian" means a person other than a parent of a child who has been named guardian of the child by a court of competent jurisdiction;

(l) "mentally retarded child" means a child certified or found to be mentally retarded under The Mental Health Act;

(m) "minister" means a member of the executive council charged by the Lieutenant Governor in Council with the administration of this Act;

(n) "parent" means a biological or adoptive parent of a child and includes a person declared to be the parent of a child under Part II of The Family Maintenance Act;

(o) "place of safety" means any place used for the emergency temporary care and protection of a child as may be required under this Act and includes treatment centres.

(p) "placement panel" means a placement panel appointed under this Act;

(q) "prescribed" means prescribed by the regulation;

(r) "single mother" means:

(i) an unmarried woman who has been delivered of a child or who is pregnant and likely to be delivered of a child; or

(ii) a widow who has been delivered of a child, or who is pregnant and likely to be delivered of a child, 300 days or more after the death of her husband, or

(iii) a divorced woman who has been delivered of a child, or who is pregnant and likely to be delivered of a child, 300 days or more after she ceased co-habiting with her husband, or

(iv) a married woman living apart from her husband who has been delivered of a child, or who is pregnant and likely to be delivered of a child, 300 days or more after she ceased co-habiting with her husband;

(s) "temporary placement agreement" means an agreement for the temporary placement of a child by an agency without the transfer of guardianship in accordance with the provisions of section 14;

(t) "treatment centre" means any place established or designated by the minister primarily for the care and treatment of more than 8 children and includes facilities operated by any government department for those purposes but does not include facilities for the reception and temporary detention of a child;

(u) "ward" means a child of whom the director or an agency is the guardian.

Best Interests

2. The best interests of the child shall be the paramount consideration of the director, an agency and a court in all proceedings under this Act affecting a child other than proceedings, to determine whether a child is in need of protection and in determining the best interests of the child the following shall be considered:

(i) the child's opportunity to have a parent-child relationship as a wanted and needed member within a family structure,

(ii) the mental, emotional, physical and educational needs of the child and the appropriate care or treatment, or both, to meet such needs,

(iii) the child's mental, emotional and physical stage of development,

(iv) the child's sense of continuity and need for permanency to be maintained with the least possible disruption,

(v) the merits and the risk of any plan proposed by the agency that would be caring for the child compared with the merits and the risk of the child returning to or remaining within his or her family,

(vi) the views and preferences of the child where they can reasonably be ascertained,

(vii) the need of the child for a final disposition in the proceedings without undue delay,

(viii) the child's cultural and linguistic heritage and lifestyle, and

(ix) any other relevant considerations.

PART I

ADMINISTRATION

Director of Child and Family Services

3. A Director of Child and Family Services shall be appointed as provided in The Civil Service Act, and designated by the Minister as such.

Duties of director

4.(1) Under the control and direction of the Minister, the director shall

(a) administer and enforce the provisions of this Act;

(b) advise the Minister on matters relating to child and family services;

(c) advise and supervise agencies;

(d) ensure or direct the development and establishment of the standards of services and the practices and procedures to be followed where services are provided to children and families;

(e) ensure that agencies are providing the standard of services and are following the procedures and practices established pursuant to clause (d) and by the provisions of this Act and the regulations;

(f) exercise the powers and duties of an agency in any area in which no agency is functioning;

(g) supervise or direct the supervision of wards, and receive and disburse monies payable for the maintenance of wards;

(h) protect children in need of protection;

(i) ensure the development of placement resources for children;

(j) submit a yearly budget for the child and family services system and keep books of account of all monies received and disbursed by the director;

(k) prepare and submit an annual report to the minister;

(l) perform such other duties as may be prescribed by this Act, by the regulations, or as may be required by the Minister.

Powers of director

4.(2) For the purpose of carrying out the provisions of this Act, the director or a person designated by the director may

(a) inspect any treatment centre, group home or other home or place in which a child is placed in accordance with the provisions of this Act;

(b) examine the records respecting a child in any of the places mentioned in clause (a);

(c) conduct enquiries and carry out investigations with respect to the welfare of any child dealt with under this Act;

(d) solicit, accept and review reports from individuals or organizations concerned or involved with the welfare of children, families, or both;

(e) designate in writing a place or type of places as a place of safety for the purposes of this Act;

(f) do any other thing in accordance with the provisions of this Act that the Minister may require;

(g) direct agencies.

Delegation by director

4.(3) The director may, in writing, authorize a person or an agency to act for the director in the performance of any of his or her duties.

Appointment of staff

4.(4) Officers and employees as may be required to carry out this Act may be appointed as provided in The Civil Service Act; and every person so appointed shall

(a) as may be prescribed by the Lieutenant-Governor-in-Council, discharge the duties of, and hold, any office authorized by law;

(b) be paid a salary or other remuneration as provided by law; and

(c) be under the direction and control of the Minister.

Provision of services

5. Child and family services in Manitoba shall be provided by Child and Family Services Agencies or, in areas where no such agency functions, by the regional offices of the Department of government through which the Minister administers this Act.

Incorporation

6(1) Any 12 or more persons over the age of 18 years, who desire to associate themselves together for the purpose of providing child and family services, may make an application in a prescribed form for incorporation under this Part.

Name and powers of corporation

6(2) Upon the minister giving his approval to the application in a prescribed form, the persons who have signed the application, and such others as thereafter become members of the organization, shall be a body corporate by the name "Child and Family Services Agency of....." (the remainder of the name to be added where indicated) or such other name as the Lieutenant Governor in Council may establish with power to make contracts necessary to carry into effect its objects, and to take and hold by gift, purchase, grant, devise, or bequest, any property, real or personal, and to dispose of and mortgage it at pleasure.

Directors

6(3) The affairs of an agency shall be managed by a board of not fewer than 3 or more than 15 directors.

Election of directors

6(4) The directors of an agency shall be elected by the members at a general meeting assembled at such place within the province, and at such time, as the application or its by-laws prescribe.

Appointed directors

6(5) The Lieutenant Governor in Council may, by order, provide that the directors of an agency be appointed by the Lieutenant Governor in Council rather than elected as provided in subsection (4).

Elected directors cease to hold office

6(6) Upon the appointment of directors of an agency under subsection (5), the directors of the agency elected under subsection (4) cease to hold office as directors of the agency and cease to have any power, authority, duties or functions as directors of the agency and the directors appointed under subsection (5) are and shall be conclusively deemed to be the board of directors of the agency and, notwithstanding the by-laws of the agency, a majority of the directors so appointed constitute a quorum for meetings of the board of directors.

Reversion to elected directors

6(7) The Lieutenant Governor in Council may rescind an order made under subsection (5) and thereupon the appointed directors shall arrange for a general meeting of the members of the agency to elect new directors as provided in subsection (4) but, notwithstanding the rescinding of the order made under subsection (5), the directors of the agency appointed under subsection (6) shall continue to hold office as directors of the agency until the new directors of the agency are elected.

Powers of directors

6(8) Subject to subsections (9) and (10) the directors may in all things administer the affairs of the agency and may,

(a) make or cause to be made for it any description of a contract into which it may lawfully enter; and

(b) make by-laws for regulating the number of directors, their term of service, the appoint-ment, functions, duties, and removal of agents, officers, and servants, the security to be given by them to the agency, their remuneration, the time at which, and place where, the annual meeting is to be held, the calling of meetings, regular and special, of the board of directors, the quorum, and the procedure in all things at meetings, the qualifications and terms of admission of members and the conduct in all other particulars of the affairs of the agency.

Approval of by-laws by director

6(9) Every by-law and every repeal, amendment or reenactment of a by-law is subject to the approval of the director and is of no force and effect unless approved in writing by the director.

Authority of director

6(10) An agency is in all matters subject to the direction of the director and shall conform to any written directives of the director regarding practices and procedures.

Dissolving of agency

6(11) The Lieutenant Governor in Council may by order dissolve an agency in which case

(a) the agency is dissolved on such date as may be specified in the order;

(b) the assets and liabilities of the agency shall be assumed by the government; and

(c) the director shall assume all the responsibilities, obligations and duties towards any child who is a ward of the agency or for whom the agency had undertaken to provide care and treatment.

Grants to agencies

6(12) From and out of the Consolidated Fund, with moneys authorized by an Act of the Legislature to be paid and applied for the purposes of this Act, the Minister of Finance may pay to an agency in any fiscal year of the province such grants as may be specified by an order of the Lieutenant Governor in Council.

Existing societies preserved

6(13) All societies incorporated or child welfare committees established under The Child Welfare Act, chapter 30 of the Statutes of Manitoba, 1974, which are in existence on the coming into force of this Act shall be continued in existence and deemed to be an agency incorporated under this Act.

Duties of agencies

7(1) According to established standards and subject to the authority of the director every agency shall:

(a) work with other human service systems to resolve problems in the social and community environment likely to place children and families at risk;

(b) provide family counselling, guidance and other services to families for the prevention of circumstances requiring the placement of children in protective care or in treatment programs;

(c) provide family guidance, counselling, supervision and other services to families for the protection of children;

(d) investigate allegations or evidence that children may be in need of protection;

(e) protect children;

(f) develop and provide services which will assist families in re-establishing their ability to care for their children;

(g) provide care for children in the care of the agency;

(h) develop permanency plans for all children in the care of the agency, with a view to establishing a normal family life for these children;

(i) provide adoption services, for all children in the permanent care of an agency as well as post-adoption services for adults;

(j) provide financial, educational and other supportive services and assistance to children who are parents, with a view to ensuring a stable and workable plan for them and their children;

(k) develop and maintain child care resources;

(l) provide services which respect the cultural and linguistic heritage of families and children;

(m) provide such reports as the director may require;

(n) take reasonable measures to make known in the community the services the agency provides;

(o) provide any other services and perform any other duties given to it by this Act or by the director in accordance with this Act.

License required for facilities

8(1) No person shall operate a foster home, group home, treatment centre, or other child care facility, without a licence from the minister for the purpose, issued in accordance with the regulations under this Act or under The Social Services Administration Act or The Community Child Day Care Standards Act.

Information for director

8(2) A person licenced under subsection (1) shall at least once annually, and more frequently when requested, supply the director with information and particulars regarding the licenced operation that the director may require.

PART II

SERVICES TO FAMILIES

Collaboration with other human services

9(1) Any interested community group or individual may apply to an agency for assistance in resolving community problems which are affecting the ability of families to care adequately for their children.

Programs to facilitate participation of volunteers

9(2) Agencies may establish service programs to facilitate the participation of volunteers in the provision of ongoing services.

Services to families

10(1) A member of a family may apply to an agency for and shall receive from the agency counselling, guidance, supportive, educational and emergency shelter services in order to aid in the resolution of family matters which if unresolved may create an environment not suitable for normal child development or in which the child or other family member could be at risk of abuse or neglect.

Services to parent who is minor

10(2) An agency on application by a minor parent shall provide services under this part to establish a plan which is in the best interests of the parent and child.

Information to parents who are minors

10(3) Agencies shall collaborate with other interested professionals and institutions to ensure that minor parents are informed of services which are available to them.

Special needs services

11(1) An agency may provide or purchase such supportive and treatment services as may be required to prevent family disruption or restore family functioning as provided for in the regulation.

Emergency assistance

11(2) An agency may provide emergency financial and material assistance to prevent family disruption as provided for in the regulations.

Day care service

12(1) Where it appears to an agency that a child is in need of care outside the family home for varying periods of time during the day, the agency may, with the consent of the parent or guardian, place the child in day care or obtain a suitable alternative.

Agreement regarding day care

12(2) Where a child has been placed pursuant to subsection (1), the agency may enter into an agreement on a prescribed form with the parent or guardian to assume a part or all of the cost of providing the child with day care as may be prescribed in the regulations.

Cost of day care

12(3) Where under subsection (2) an agreement is entered into with respect to the placement of a child for day care, the cost of day care to be assumed by a parent or guardian will be determined in accordance with regulations made under The Community Child Day Care Standards Act.

Approval of director

12(4) Notwithstanding the rates prescribed by any regulation under The Community Child Day Care Standards Act where there are special conditions surrounding the child needing day care the amount payable for the day care by the parent or guardian of a child shall be subject to the approval of the director set out in an agreement.

Payment for day care

12(5) The cost assumed under subsection (2) shall be chargeable to and payable by the director in accordance with a method and at a rate approved by the minister.

Homemaker service

13(1) Where it appears that a child who is unable to look after and care for himself is temporarily without any person able to look after and care for him in his family home, an agency may

(a) with the consent of the parent or guardian; or

(b) in the absence of the parent or guardian;

place a homemaker in the family home to care for the child during that temporary period.

Notification of parent

13(2) Where an agency has placed a homemaker under clause (b) of subsection (1) the agency shall

(a) forthwith attempt to notify the parent or guardian of the child of the placement;

(b) where, after the expiration of 7 days from the date of placement of the homemaker, the parent or guardian cannot be located, proceed under subsection 23(2).

Rights and responsibilities of homemaker

13(3) A homemaker placed under subsection (1) may

(a) enter the family home;

(b) live in the family home;

(c) use any equipment, apparatus, tools, fixtures or implements on the premises normally used in house-keeping or maintaining the family home, and carry on normal housekeeping activities on the premises in such manner and to such extent as is reasonably necessary to care for the child properly;

(d) exercise reasonable control and discipline over the child;

(e) provide goods and services necessary to care for any child on the premises;

(f) provide training, teaching and counselling to parents or guardians to assist them in proper -ly caring for the family home and any child in the family home.

Parent aide

13(4) Where it appears that the parent or guardian requires training in homemaking and raising the child, the agency may place a parent aide in the home of the parent or guardian in order to assist in parenting and help create better home conditions for the child.

Agreement regarding homemaker/parent aide service

13(5) Where an agency has placed a homemaker or parent aide under subsection (1) or subsection (4) the agency may

(a) enter into an agreement on a prescribed form with the parent or guardian for a period not exceeding 3 months to assume a part or all of the cost of maintaining the homemaker or parent aide as may be prescribed by the regulations; and

(b) subject to the approval of the director, renew the agreement with the parent or guardian for one or more periods each of which shall not exceed 6 months.

Terms of agreement may vary

13(6) Where under clause 13(5)(b) an agreement is renewed, the terms thereof may remain the same or may be varied, if in the opinion of the agency the variation is necessary.

Payment for homemaker/parent aide service

13(7) The cost of the homemaker and parent aide service under this section shall be chargeable to and payable by the director in accordance with a method and at a rate approved by the minister.

Temporary placement agreement

14(1) A parent, guardian, or other person who has actual care and control of a child and who through necessitous or other circumstances, illness or misfortune, likely to be of a temporary duration is unable to make adequate provision for the child, may apply to an agency to have the child placed temporarily without transfer of guardianship in a foster home, group home, or treatment centre, or any other place which provides child care.

Agreement

14(2) The agency may enter into an agreement under subsection (1) on a prescribed form with the applicant for a period not exceeding 12 months, and may assume a part or all of the cost of maintenance of a child as may be prescribed in the regulations.

Renewal of agreement

14(3) An agency that has entered into an agreement under subsection (2) may renew the agreement for a further period or periods; but in no case shall the period of the agreement entered into under subsection (2) together with the renewal period or periods exceed 24 months with the exception of the period of the agreement respecting a mentally retarded child or a child over the age of 14 years which may be extended on an annual basis up to the age of majority.

Agreement subject to approval of director

14(4) An agreement entered into under subsection (2) or any renewal thereof entered into under subsection (3) is subject to the approval of the director.

Termination of agreement

14(5) An agreement entered into under subsection (2) and any renewal thereof may be terminated at any time, upon the execution of a prescribed form, either by the agency or the parent or other person who entered into the agreement and written notice of the termination shall be given by the party terminating the agreement to the director.

Parent leaving province

14(6) Where a parent or other person under an agreement with the agency leaves the province without the prior approval in writing of the director, the agency may terminate the agreement and shall notify the director.

Cost of care

14(7) The cost of care under this section shall be chargeable to and payable by the director in accordance with the rates fixed by the minister.

Validity of agreement with minor

14(8) No agreement with a parent under this section is invalid by reason only of the fact that the parent entering into it is under 18 years of age.

Waiver or reduction of contribution

14(9) Where an applicant under subsection (2) enters into an agreement and under that agreement undertakes to pay a part of the cost of the maintenance of the child, the director, if he is satisfied that hardship will be suffered by the applicant in paying that cost, may waive that undertaking or reduce the amount agreed to be paid by the applicant.

Mentally retarded children

15 Where the Director of Psychiatric Services has issued an order placing a mentally retarded child under the supervision of the director, the director when placing that child in a foster home, group home, or treatment centre may authorize an agency to enter into a temporary placement agreement pursuant to the provisions of section 6 with the parent or person who has actual custody of the mentally retarded child.

Voluntary surrender of guardianship

16(1) Notwithstanding any other section of this Act, a single mother may, by agreement on a prescribed form, surrender guardianship of her child to an agency, and an agreement under this section is a good and valid agreement notwithstanding that the single mother is under the age of majority.

No surrender where child under 7 days

16(2) No agreement shall be entered into under subsection (1) until the expiration of at least 7 clear days after the date of birth of the child.

No placement until 2 juridical days after consent

16(3) Subject to subsection (4), no child surrendered under subsection (1), (5) or (6) shall be placed for adoption until the expiration of at least 2 juridical days after the execution of the agreement under subsection (1), (5) or (6) as the case requires.

No placement where declaration of parentage being sought

16(4) No child shall be placed for adoption under subsection (3) where the director has been served with notice of an application under Part II of The Family Maintenance Act by a man that he be declared to be the father of the child in question unless

(a) the application is withdrawn; or

(b) the court dismisses the application and all appeals from the dismissal have been exhausted.

Man declared to be father may surrender

16(5) Where a man is declared to be the father of a child pursuant to Part III of The Family Maintenance Act, he may join with the mother in the surrender of guardianship of their child in which case subsections (1), (2), (3) and (8) apply with the necessary changes.

Surrender of guardianship by parents

16(6) The parents of a child jointly may, by agreement on a prescribed form, surrender guardianship of the child to an agency in which case subsections (1), (3) and (8) apply with the necessary changes.

Agreement subject to approval of director

16(7) An agreement entered into under this section is subject to the approval of the director.

Withdrawal of voluntary surrender of guardianship

16(8) A person who has voluntarily surrendered guardianship of a child under this section may, by written notice to the agency through whom guardianship was surrendered, withdraw the voluntary surrender of guardianship at any time prior to the day that the child is placed in a home by the agency for the purpose of adoption or within 1 year from the date of the agreement, whichever is the earlier, but not thereafter.

Effect of placement

16(9) Upon the expiration of 1 year from the signing of a surrender of guardianship under this section or the placement of a child for adoption by the agency, whichever is the earlier, the rights and obligations of the parents with respect to that child are thereby terminated but nothing herein affects the child's right to inherit from his parents prior to an order of adoption being granted.

Affidavit to execution

16(10) An affidavit of execution shall form part of every voluntary surrender of guardianship agreement.

No notice of adoption application

16(11) Notwithstanding any other provision of this Act, a person who has surrendered guardianship under this section shall not be given notice of an application for an order of adoption of the child.

Agreements involving a minor single parent

17 Where a single mother or the person alleged to be the father of her child is, or both are, under the age of majority, any agreement between them providing for the person alleged to be the father to pay to the single mother periodic payments for the maintenance of the child is valid only if the parent or guardian of the minor parties to the agreement or an agency is also party to the agreement.

PART III

CHILD PROTECTION

Child in need of protection

18 In this Act, a child in need of protection includes a child

(a) without adequate care, supervision or control;

(b) in the care of a person

(i) who is unable or unwilling to provide adequate care, supervision or control of the child; or

(ii) whose conduct endangers or may endanger the life, health, or emotional well-being of the child; or

(iii) who neglects or refuses to provide or obtain proper medical, surgical or other remedial care or treatment necessary for the health or well-being of the child or refuses to permit such care or treatment to be supplied to the child; or

(iv) who does not have a right to custody of the child, without the consent of a person having such right;

(c) who is abused, or who is in danger of abuse;

(d) who is beyond the control of the person caring for him;

(e) who by his behaviour, condition, environment, or association is likely to injure himself or others;

(f) who refuses or is unable to provide properly and adequately for the health needs of herself or her child;

(g) who is subject of activities in violation of section 67 or section 82; or

(h) who, being under the age of 12 years has been left unattended and without reasonable provision having been made for his supervision and safety.

Reporting a child in need of protection

19(1) Any person who has information causing him or her to suspect that a child is in need of protection, shall forthwith report the information to the director or an agency.

Duty to report

19(2) Notwithstanding the provisions of any other Act, subsection (1) applies even where the person has acquired the information through the discharge of his professional duties or within a confidential relationship, but nothing in this subsection abrogates any privilege that may exist because of the relationship between a solicitor and the solicitor's client.

Failure to report is an offence

19(3) Any person who fails to comply with subsection (1) commits an offence.

Further consequences of non-reporting

19(4) In addition to or instead of any action which may be taken pursuant to subsection (3), where there are reasonable grounds to believe that

(i) a physician, nurse, dentist, or other health or mental health professional,

(ii) a hospital administrator,

(iii) a school principal, school teacher or other teaching professional,

(iv) a social work administrator, social worker or other social service professional,

(v) a child care worker in any day care centre or child caring treatment centre,

(vi) a police or law enforcement officer,

(vii) a psychologist or a guidance counsellor,

(viii) a recreational services administrator or worker, or

(ix) any other person who by virtue of his employment or occupation has a responsibility to discharge a duty of care towards a child,

has failed to comply with subsection (1), the director may report the matter to any professional society, association or other organization authorized under the laws of the province to regulate the professional activities of the person, and that professional society, association or organization shall cause an investigation to be made into the matter.

Protection of informant

19(5) No action lies against a person for providing information in good faith and in compliance with subsection (1).

Identity not revealed

19(6) Except in the course of judicial proceedings, no person shall reveal to the family of the child the identity of a person who has given information under subsection (1) without that person's written consent.

To reveal is an offence

19(7) Any person who violates subsection (6) commits an offence.

Interference and harassment is an offence

19(8) Any person who interferes with or harasses any person as a result of that person providing information to an agency with respect to any situation where a child may be in need of protection commits an offence.

Agency to investigate

20 Where the agency receives a report or information about any situation that causes it to suspect that a child may be in need of protection, the agency shall immediately investigate the situation and shall take such steps as it considers necessary to protect the child, and as may be set out in regulations.

Agency to report abuse to director

21(1) Where an agency receives information respecting the abuse of a child, in addition to taking the steps required by section 20, the agency shall forthwith report the information to the director.

Communication of findings from investigation of abuse

21(2) Upon completion of an investigation with respect to the abuse of a child, the agency may advise the person who provided information respecting the abuse, and shall inform

(a) the parent or guardian of the child;

(b) any person identified during the investigation as a person subjecting the child to abuse; and

(c) the child, if in the opinion of the agency the child is capable of understanding the information and it is in the best interests of the child;

as to the findings and conclusions of the investigation.

Entry without warrant in certain cases

22 The director, an officer of an agency or a peace officer who on reasonable and probable grounds believes:

(a) that a child is in immediate danger; or

(b) that a child who is unable to look after and care for himself has been left without any responsible person to care for him;

may, without warrant and by force if necessary, enter the premises to investigate the matter and shall take such steps as he considers necessary to protect the child.

Options when a child is in need of protection

23(1) The director, an officer of an agency or a peace officer who on reasonable and probable grounds believes that a child is in need of protection, may,

(a) apprehend the child without a warrant and take the child to a place of safety where the child may be detained for examination and temporary care and be dealt with in accordance with the provisions of this Act; or

(b) leave the child with or return the child to the parent or person in whose charge the child is and notify that parent or person that the circumstances surrounding the child will within 30 days from the date or notice or such further time as a judge may allow be examined before a judge in accordance with the provisions of this Part.

Assistance of peace officer

23(2) Where in apprehending a child under this Part, an officer of an agency needs assistance for the purpose, he may seek the assistance of a peace officer and in such case the peace officer shall provide such assistance as is reasonably necessary.

Warrant to search for child

24(1) Where on application it appears to a judge or a justice of the peace, that there are reasonable and probable grounds for believing there is a child who is within the jurisdiction of the judge or the justice of the peace and is in need of protection, the judge or justice of the peace may issue a warrant authorizing a person mentioned in section 23

(a) to enter, by force if necessary, a building or other place specified in the warrant and search for the child; and

(b) to take the child to a place of safety if in his opinion the child appears to be in need of protection.

Child need not be named

24(2) It is not necessary in the application or the warrant to describe a child by name.

Notification of agency

25 Where a child is apprehended under this Part by a person other than an officer of an agency, the person apprehending him shall forthwith notify the agency having jurisdiction in the area where the child was apprehended giving all particulars with respect to the child.

Failure of agency to act is subject of court hearing

26 Where, upon application to a judge by any person, the judge is satisfied that there are reasonable and probable grounds to believe that a child is in need of protection and that the matter has been reported to an agency and the agency has failed within a reasonable time to take appropriate action, the judge may, after affording the agency an opportunity to be heard

(a) make an order directing the agency to search for the child and to take the child to and detain the child in a place of safety until the matter can be brought before a judge; or

(b) order a person in whose charge the child is to produce the child before a judge at the time and place named in the order; or

(c) dismiss the application.

Saving

27(1) The fact that a child is under the care of an agency or in a treatment centre or the fact that an agency has, pursuant to section 13 for the purposes of caring for the child, placed a homemaker in the home in which the child has been left does not prevent

(a) a person authorized to do so from apprehending the child as provided in this Part; or

(b) a judge from finding the child to be in need of protection.

Child remaining in hospital as a patient

27(2) Where at the time of being apprehended, taken, or detained under this Part, a child is a patient in a hospital, the officer or other person apprehending, taking, or detaining him may, if so advised by a duly qualified medical practitioner, leave the child in the hospital; and for the duration of the hospitalization the hospital shall be deemed to be a place of safety.

Care while under apprehension

28(1) During the time that a child is apprehended or is placed under protection an agency

(a) is responsible for his care, maintenance, education and well-being; and

(b) may authorize the provision of such medical, surgical, and psychiatric care as may be recommended by a duly qualified medical practitioner or psychiatrist without the consent of the parent or guardian and without an order of the court.

No liability

28(2) No liability attaches to the agency or to a duly qualified medical practitioner or to a hospital by reason only that a child is provided with medical, surgical, or psychiatric care under subsection (1).

Child not to be held in lock-up with adult prisoners

29 A child shall not be held in a correctional institution, lock-up, or police station, in the same room or cell in which an adult prisoner is held.

Parents to be notified of apprehension

30(1) An agency, upon notification that a child has been apprehended and brought to a place of safety, shall forthwith, where possible, notify the parents or guardian of the apprehension of the child.

Application to court within 4 days

30(2) The agency shall, within 4 juridical days after the day of apprehension or within such further period as a judge, magistrate or justice of the peace on application may allow, make an application for a hearing to determine whether the child is in need of protection; and the agency shall at the time of making the application state at what times, if any, and on what conditions it will allow access by the parents or guardian to the child pending the hearing.

Hearing re access by parents or guardian

30(3) Where the parents or guardian do not consent to the provisions for access proposed by the agency under subsection (2), they may make application to a judge who shall determine what provisions as to access are appropriate in the circumstances and the agency shall bear the burden of proof that any limitation of access is reasonable.

Transfer of proceedings to another court

31 Where a court having jurisdiction in a matter is satisfied that there is a preponderance of convenience in favour of holding the hearing in respect of the child in another place, the court may at any time after an application is made in respect of the child under this Part and before hearing the application, transfer the proceedings to a court having jurisdiction in that other place.

Date when application returnable

32(1) Where a child has been apprehended and an application with respect to the child is filed in accordance with clause 23(1)(b) or subsection 30(2) the application shall be returnable within 30 days before a judge or magistrate or within such further period of time as a judge or magistrate may upon application allow.

Adjournment

32(2) A judge or magistrate before whom an application mentioned in subsection (1) comes may adjourn the matter from time to time as may be required.

Notice of hearing

32(3) Ten clear days notice of the date, time and place upon which an application mentioned in subsection (1) is returnable or set for hearing, shall be given on a prescribed form by the agency to

(a) the parents;

(b) the guardians;

(c) the person in whose home the child was living at the time of apprehension or immediately prior to placement in hospital or other place of safety; and

(d) the agency serving the Indian band to which the child belongs if the agency making the application is aware that the child is registered or is entitled to be registered as an Indian under the Indian Act (Canada);

and no further notice is required to be given by the agency thereafter.

Reduction in time of notice and waiver of notice

32(4) Notwithstanding subsection (3), a person or agency entitled to receive notice under that subsection may agree

(a) to a reduction in the number of days within which notice shall be given; or

(b) to a complete waiver of notice at any time up to and including the date and time of the actual hearing of the application notwithstanding that the hearing may be in progress.

Service of notice

32(5) Unless a judge on application directs some other manner of effecting service, notice under subsection (3) shall be given by personal service in the case of the parent, guardian, and the person in whose charge the child was at the time of apprehension and may be made either personally or by registered mail in the case of the agency serving the Indian band with which the child is registered.

Court may dispense with service of notice

32(6) Where under subsection (3) an agency is required to serve a notice of hearing upon a person, a judge in his discretion may dispense with the service of notice on that person.

Nature of proceedings

33(1) A hearing under this Part may be as informal as the judge will allow, having due regard to the best interests of the child, and of the parents.

Presence of child not required

33(2) In proceedings under this Part, the presence of the child at the hearing is not required unless the judge so orders.

Right to legal counsel

33(3) The judge shall advise those persons affected by a hearing under this section that they have the right to be represented by legal counsel; and in the case of a child if the judge is of the opinion that the child should be represented by counsel he may order that legal counsel be provided to represent the interests of the child.

Matters to be considered in ordering legal representation for child

33(4) In determining under subsection (3) whether representation of the child is desirable, the judge shall, in addition to all other relevant considerations, have regard to,

(a) any difference in the view of the child and views of the agency or of a parent of the child;

(b) any difference in the interests of the child and the interests of the agency or of a parent of the child;

(c) the nature of the proceedings, including the seriousness and complexity of the issues and whether the agency is requesting that the child be removed from the home of a parent of the child;

(d) the capacity of the child to express his or her views to the court;

(e) the views of the child regarding separate representation, where such views can reasonably be ascertained; and

(f) the presence of parents or guardian at the proceeding.

Proceedings by judge

33(5) A judge may for the purposes of a hearing under this Part

(a) compel on his own motion the attendance of any person and require him to give evidence under oath and to produce such documents and things as may be required;

(b) accept evidence by affidavit;

(c) accept as evidence a certificate completed by a duly qualified medical practitioner, psychiatrist, psychologist, social worker or other professional person of any profession as evidence without proof of the signature or authority of the person signing it.

Child's views to be considered

33(6) In any proceeding under this Part, where the court is satisfied that the child is able to understand the nature of the proceedings and the court is of the opinion that it would not be harmful to the child, the court may consider the views and preferences of the child.

Court may direct investigation

33(7) In a proceeding under this Part, and upon being satisfied that it is necessary in order to determine the best interests of the child, the court may direct an investigation into any matter by a person who

(a) has had no previous connection with the parties to the proceeding or to whom each party consents; and

(b) is a social worker or other person approved by the court for the purpose.

Refusal to cooperate

33(8) Where a court directs an investigation pursuant to subsection (7) and a party refuses to cooperate with the investigator, the investigator shall so report to the court which may draw any inference therefrom it considers appropriate.

Proceedings open to media

34(1) All proceedings under Parts III and IV shall be closed to the general public but shall be open to representatives of the press, radio and television unless the court, on application, is satisfied that the presence of such representatives would be manifestly harmful to any person involved in the proceedings.

Reporting not to identify persons involved

34(2) No press, radio or television report of a proceeding under Parts III and IV shall disclose the name of any person involved in the proceedings as a party or a witness or disclose any information likely to identify any such person.

Offence and penalty

34(3) A person violating subsection (2) is guilty of an offence and liable, on summary conviction, if an individual to imprisonment for 2 years or to a fine of $5,000 or both and if a corporation to a fine of $50,000.

Offence by an officer, etc. of corporation

34(4) Where a corporation is guilty of an offence under this section, any officer, director or agent of the corporation who directed, authorized, participated in, or acquiesced in, the commission of the offence, is party to and is also guilty of the offence and is liable, on summary conviction, to the penalties set out under subsection (3).

Particulars to be supplied on request

35(1) A party served with an application under clause 23(1)(b) or subs 30(2) IV may serve the applicant with a demand for particulars of the grounds which are alleged to justify a finding that a child is in need of protection and the applicant shall as soon as it reasonably can file and serve full particulars.

Order for further particulars

35(2) Where a respondent is dissatisfied with the particulars provided under subsection (1), he may apply to court for an order that the applicant provide further particulars.

Cross-examination of parents

36 Notwithstanding any other provision of this or any other Act, an agency may, by serving notice of its intention to do so 14 days before the hearing or such shorter period as the court may allow, call the parent or guardian or both of the child who is the subject of an application under this Part as a witness and any person so called shall be treated as a hostile witness.

Consent orders

37 Where the parents or guardian of a child consent, or the person who has charge or custody of a child consents, a judge may, without receiving further evidence make an order respecting the child in accordance with clause 38(1)(a), (b), (c), (e) or (f) as the case may require, and may, subject to section 43 review or extend that order.

Orders of the judge

38(1) Where upon the completion of a hearing under section 33 a judge finds that a child is in need of protection, he shall in the best interest of the child, order

(a) that a child under 5 years of age at the date of apprehension be made a temporary ward of the agency for a period not exceeding 6 months; or

(b) that a child 5 years of age or older and under 12 years of age at the date of apprehension be made a temporary ward of the agency for a period not exceeding 12 months, or

(c) that a child of 12 years of age or older be made a temporary ward of the agency for a period not exceeding 24 months; or

(d) that the child be made a permanent ward of the director; or

(e) that the child be returned to his parents or to such other person in whose charge he was at the time of apprehension and place the child under the supervision of an agency for a period the judge considers necessary; or

(f) that the child be placed with such other person the judge considers best able to care for the child with or without transfer of guardianship and subject to whatever conditions and for whatever period the judge considers necessary.

Effective date of order

38(2) An order made under subsection (1) is effective from the date of pronouncement.

Right to enter home

38(3) Where a judge makes an order under clause 38 (1) (e) or (f) the judge may attach conditions to that order and the agency under whose supervision the child is placed or any representative thereof has the right to enter the home where the child is to provide guidance and counselling and to ascertain that the child is being properly cared for and maintained.

Further apprehension of child

38(4) Where pursuant to subsection (1) an agency that is authorized to exercise supervision over a child finds that the child is not being properly cared for and maintained or that the child is in need of protection, the child may be apprehended in accordance with clause 4(2)(a), notwithstanding the order of the judge made under subsection (1).

Access by parents where temporary order

39(1) Where a judge mades an order under clause 38 (1) (a), (b), (c), (e) or (f) and the order is silent as to access by the parents to the child, the parents or guardian shall have reasonable access to the child.

Application to determine access

39(2) Where the parents or guardian and the agency are unable to agree as to what constitutes reasonable access to the child, either party may make an application to the judge who made the order for an order determining what provisions as to access are appropriate in the circumstances.

Access by parents where permanent order

39(3) Subject to subsection (4), where a judge makes an order under clause 38(1)(d) the agency shall have complete discretion as to the access, if any, which the parents or guardians shall have to the child.

Application to determine access where permanent order

39(4) Where the parents or guardian are dissatisfied as to the access, if any, which the agency is willing to grant them under subsection (3) and the child has not been placed for adoption, they may make an application to the judge who made the order for an order determining what provisions as to access, if any, are appropriate.

Variation of order under subsec. (2) or (4)

39(5) Either party may make a further application for a variation of an order under subsection (2) or (4) at any time after an order under those subsections has been made on the grounds that there has been a change in circumstances since the order was granted justifying a change in access or that the access permitted has been shown to be in practice contrary to the best interests of the child.

Where judge unable to act

39(6) Where the judge who made the order under subsection 38(1) is unable for any reason to hear an application for access under subsection 39 (2), (4) or (5) any other judge of the same court may hear the application.

Distribution of order

40 A copy of an order made under section 38 or 42 shall be mailed by the court to

(a) the director;

(b) the agency;

(c) the parents and guardian at their last address known to the court; and

(d) the agency serving the Indian band with which the child is registered, if applicable.

Parents ordered to contribute

41(1) Where a judge makes an order under clause 38(1) (a), (b), (c), (e) or (f) he may, upon application of an agency, order the parents or guardians to contribute to the cost of the child's maintenance or to refund to the agency the whole or any part of the sum that has been expended for maintenance of the child prior to the making of the order.

Variation of order

41(2) Upon an application made to a judge by any person who is affected by an order made under subsection (1) and upon sufficient cause being shown, the judge, if satisfied from the evidence adduced may alter, vary, or discharge the order.

Further hearings

42(1) Where under section 38 a judge has issued an order making a child a temporary ward of an agency or an order pursuant to clause 38(1)(e) or (f), any judge may, notwithstanding that order, upon application made by the agency, parent or guardian of the child or person with whom the child was placed.

(a) at any time during the period in which the above mentioned orders in force; or

(b) within 30 days after the expiration of these orders;

hold further hearings to determine whether the child is still in the need of protection and upon the conclusion of the hearing the judge may

(c) continue or extend the period of any of the above mentioned orders; or

(d) make a child a permanent ward of the director; or

(e) terminate the temporary guardianship and discharge the child; or

(f) terminate the temporary guardianship and place the child under supervision of an agency for a period the judge considers necessary; or

(g) return the child to the parents from placement with or without supervision by an agency; or

(h) place the child with such other person as the judge considers best able to care for the child with or without transfer of guardianship to or supervision by an agency; or

(i) dismiss the application.

Notice of application and hearing

42(2) Where an application is made under subsection (1), notice thereof and of the hearing shall be given by the applicant within the time specified in subsection 32(3)

(a) where the applicant is the agency, to the parents or guardian of the child and, if applicable, to the person with whom the child was placed by court order and, if applicable, to the agency serving the Indian band with which the child is registered;

(b) where the applicant is a parent or guardian of the child, to the agency which has guardianship of the child or supervision of the placement and, if applicable, to the person with whom the child was placed by court order and, if applicable, to the agency serving the Indian band with which the child is registered; and

(c) where the applicant is the person with whom the child was placed by the court order, to the parents or guardian of the child and, if applicable, to the agency having supervision of the placement and, if applicable, to the agency serving the Indian band with which the child is registered.

Former order deemed to be continued

42(3) Where the date fixed for the hearing or the adjourned date for the hearing of an application under subsection (1) falls on or after the expiry date of the former order, the former order shall be deemed to continue until the application is either withdrawn or is disposed of.

Application of certain provisions to hearing

42(4) The provisions of this Part apply, with the necessary changes to an application and hearing under this section.

Maximum period of guardianship

43(1) Any extension or continuation of the period of temporary guardianship of a child under section 42 shall not exceed

(a) 6 months with respect to a child under 5 years of age; or

(b) 12 months with respect to a child 5 years of age or older and under 12 years of age;

and the period or periods of extension or continuation under that section together with the period of temporary guardianship granted under section 38 shall not exceed

(c) 15 months with respect to a child under 5 years of age; or

(d) 24 months with respect to a child 5 years of age or older and under 12 years of age.

Period of guardianship for child over 12

43(2) A judge may extend or continue the order of guardianship of a child 12 years of age or over for a further period or periods not exceeding 24 months each, as the case may require.

Age for purposes of subsec. (1) and (2)

43(3) Where a child under 5 years of age has been apprehended, he shall be considered for the purposes of clauses (1)(a) and (c) as a child under 5 years of age even if at the time the court is making the extension or continuation the child is 5 years of age or more but in all other cases the court shall be governed by the age of the child at the time of making the order.

Appeal

44(1) An appeal lies from the decision or order of a judge under this Part to the Court of Appeal.

Time for appeal

44(2) An appeal under subsection (1) shall be made within 21 days from the date on which the judge signed the order appealed against.

Extension of time for appeal

44(3) The time for appeal under subsection (2) may be extended by a judge of the Court of Appeal sitting in chambers if good cause is shown for the delay and if the child has not been placed for adoption.

Filing and service of notice of appeal

44(4) The notice of appeal shall be filed with the Court of Appeal and within 10 days from the date of the filing thereof a true copy of the notice shall be served personally or by registered or certified mail or by such other means as the court may allow, upon

(a) all parties affected thereby; and

(b) except where he is the appellant, the director.

Status of child during appeal

44(5) Where a judge has found that a child is not in need of protection, or made an order under clause 38(1)(e) or (f) or clauses 42(1)(e), (f), (g) or (h), the agency shall release the child from its care and control in accordance with the terms of the order within 14 days of the date on which the judge pronounced the order, unless within that period it obtains from a judge of the Court of Appeal in chambers an order that the child remain in the care and control of that agency pending the disposition of the appeal.

Order not affected by technicality

45 No order under this Part with respect to a child shall be quashed or set aside because of any informality or technicality.

Temporary ward in care of the agency of child's residence

46(1) Where the judge makes an order under section 38 or 42 that a child be a temporary ward of an agency, the judge shall commit the said child to the care of the agency making the application or to another agency upon its consent.

Ward of director cared for by the agency of child's residence

46(2) Where the judge makes an order under section 38 or 42 that a child be a permanent ward of the director, the agency making the application shall assume the care of the child on behalf of the director.

Termination of permanent wardship on application

47(1) Where a child is relinquished pursuant to section 16 and is not placed for adoption or where a child is made a permanent ward, under section 38 or 42 the agency which supervises that child on behalf of the director or a parent may, with the consent of the director apply to a judge for an order terminating the wardship and the judge may order that the voluntary surrender of guardianship agreement or the order of permanent guardianship be terminated and the judge may make an order appointing the parent or other person to be permanent guardian of the child.

Wishes of child may be consulted

47(2) In considering an application under this section, the judge, if he deems it advisable may consult the wishes of the child.

Effect of order of permanent guardianship

48(1) An order of permanent guardianship operates as an absolute termination of parental rights and responsibilities, and the director may, following the expiration of the allowable period of appeal under section 44, place the child for adoption, but nothing herein affects the child's right to inherit from his parents prior to an order of adoption being granted.

Placing of children who are in care

48(2) A permanent or temporary ward or a child placed in the care of an agency under a temporary placement agreement may be placed by the agency in a suitable place having regard to his cultural and linguistic heritage and life-style, preferably in his home community, but if such placement is not possible or practical at the relevant time, the child may be placed in the most suitable place available.

Child permitted to live with parents

48(3) The agency may permit the ward to live with the ward's parents, former guardian or extended family member subject to the supervision of the agency.

Removal of child by an agency

48(4) A child placed in accordance with subsection (2) or (3) may at any time be removed by the agency.

Foster parents may apply to adopt

48(5) Where a permanent ward is placed in a foster home and in the opinion of an agency caring for the child it is in the best interests of the child that the child be placed for adoption, the foster parents may make an application under section 68 to have the child placed with them for adoption.

Authority of the guardian

49 The director or an agency is the legal guardian of every child entrusted to its care under this Act and unless the guardianship is limited by the court, the director or agency during the continuance of the guardianship is entitled to

(a) the custody, control of and responsibility for the care, maintenance and education of the child;

(b) act for and on behalf of the child, and

(c) appear in any court and prosecute or defend any action or proceeding in which the child's status is or may be affected.

Review by director

50 The director or any person authorized by the director shall, during each calendar year, review the conditions of placement, care and treatment of every child in the care of an agency.

Transfer of wards of director

51 The director may authorize that a ward of the director be transferred to the care of any other agency designated by the director.

Transfer of temporary guardianship or supervision

52(1) The director may upon application transfer temporary guardianship or supervision of a child from the agency to whom guardianship or supervision has been given under this Part to another agency.

Consequences of transfer

52(2) Where a transfer is made under subsection (1), the agency to whose guardianship the child is transferred shall from the date of the transfer, be deemed to be for all purposes the agency named in an order made by a judge under this Part, and any person liable to make payments under any such order shall make them to the agency to whose guardianship the child has been transferred.

Expiration of wardship

53(1) Subject to subsections (2) and (3) every order of guardianship and the effects of the voluntary surrender of guardianship shall be deemed to expire with the marriage of the child who is the subject of the order or when the child attains the age of majority.

Order revived on marriage breakdown

53(2) Where the marriage of the child breaks down while the child is still under the age of majority, the order shall be deemed to be revived and to be of full force as if it had never expired.

Care and maintenance continued until age of 21

53(3) Where an order of guardianship expires as a result of a ward of director attaining the age of majority, an agency may, with the written approval of the director, continue to provide care and maintenance for the former ward of director if the former ward of director

(a) is enrolled as a full-time student at an educational institution; or

(b) is mentally or physically incapacitated; or

(c) is in need of continued protection;

for any period of time after the expiration of the order of guardianship which period does not extend beyond the date when the former ward of director attains the age of 21 years.

Interference with children in care

54(1) No person shall

(a) induce or attempt to induce, help or attempt to help a person under the age of 18 years who is lawfully in the care of an agency or treatment centre that provides care for children to leave the premises in which he is lawfully placed; or

(b) detain or harbour a person under the age of 18 years, who is lawfully in the care and custody of an agency or treatment centre that provides care for children and who is absent from his place of custody without authority; or

(c) visit, write to or telephone a child without the consent of the person or agency or treatment centre under whose supervision the child is which consent shall not be unreasonably withheld or otherwise interfere with the child who is placed in a foster home or other place, or interfere with the foster parents of the child in such a manner that detracts from the rights of the foster parents to care for the child.

Apprehending a child who absconds

54(2) Any child who

(a) absconds from any premises where he is lawfully placed under this Act; or

(b) without the express permission of the agency or any person in charge of the premises where he is lawfully placed; leaves such premises or any other place where he is permitted to be;

may be apprehended with or without warrant by a peace officer or any person and returned forthwith to the premises where he was lawfully placed or to such other premises as the agency may designate.

Warrant for apprehension

54(3) Where upon application by a peace officer or any interested person, a family court judge, magistrate or justice of the peace, is satisfied that a child referred to in subsection (1) has absconded from any premises where he is lawfully placed, the family court judge or magistrate or justice of the peace may issue a warrant for the apprehension of the child so that he may be returned to the premises where he is lawfully placed or to such other premises as the agency may designate.

Penalty

54(4) Every person who contravenes any provision of subsection (1) is guilty of an offence.

Child mistreatment an offence

55(1) Any person having the care, custody, control or charge of a child and who abuses or neglects the child or fails to protect the child is guilty of an offence.

Child under 12 not to be left unattended

55(2) Any person having the care, custody, control or charge of a child under the age of 12 years who leaves the child unattended for an unreasonable length of time without making reasonable provision for the supervision and safety of the child is guilty of an offence.

Report of newspaper advertisement

56(1) Every publisher of a newspaper or magazine published in Manitoba who receives any advertisement dealing with the adoption, or boarding out of a child, except from an agency, shall obtain from the person placing the advertisement a memorandum in writing signed by him, giving his name, address and occupation, and the publisher shall immediately after the first publication of the advertisement mail to the director a copy thereof as published, together with a copy of the memorandum.

Penalty

56(2) A person who fails to comply with subsection (1) or who gives false information under that subsection is guilty of an offence.

Not to communicate information

57(1) Except where giving evidence in any court or carrying out the provisions of this Act, no person employed by an agency or in the service of the Crown or appointed under this Act shall communicate, or allow to be communicated, information obtained under any provision of this Act to any person not entitled to the information, to inspect or have access to any written statement furnished under this Act, without authority in writing of the Director of the agency concerned.

Penalty

57(2) A person who violates any provision of this section is guilty of an offence.

PART IV

Adoptions

General Provisions

Definition

58 In this Part

(a) "agency" means

(i) a child and family services agency, or

(ii) the minister or other official of any government of a province of Canada charged with the administration of the adoption of children in that province, or

(iii) any other association, society, person, corporation or government official or department, outside Manitoba, having the right under the laws of a province, state or country to provide adoption services;

(b) "court" means the Court of Queens Bench;

(c) "extended family", when used in reference to any person, includes

(i) a parent or grandparent of the person;

(ii) a brother or sister of the person;

(iii) a brother or sister of the person's mother or father and their adult children;

(iv) the spouse of any of the above, while the spouses are cohabiting;

(v) the spouse of the parent, while the spouses are cohabiting;

(d) "judge" means a judge of the Court of Queens Bench.

Any person may be adopted

59 Subject to provisions of this Part, any person may be adopted.

Who may adopt

60 Any adult person, or a man and a woman together, both of whom are adults may, in the manner provided in this Part, adopt another person younger than themselves.

Adoption in another jurisdiction

61 An adoption granted according to the law of any other province, territory of Canada or of any other state or country that is substantially similar in effect to an adoption under this Part shall be recognized in the province and shall have the same force and effect as if made under this Part.

Consents required for placement by agency

62(1) The agency which has in care a permanent ward of the director may place that ward for adoption, but a judge shall not make an order for adoption with respect to that ward unless

(a) written consent on a prescribed form has been given by the director; and

(b) written consent of the ward on a prescribed form is obtained if the ward is 12 years of age or older.

Consents required where placement made other than by agency

62(2) A judge shall not make an order of adoption of a child who has not been placed for adoption by the agency unless written consent to the adoption on a prescribed form is given by

(a) both parents, if living or the surviving parent, where one of the parents is dead; or

(b) a single mother whose parental rights with respect to the child have not been permanently terminated whether or not that single mother has attained the age of majority; or

(c) the guardian of the person of the child other than the single mother; and

(d) by the child if the child is 12 years of age or older.

No consent until 10 clear days after birth

62(3) No person shall execute or give consent to the adoption of a child under subsection (2) and no person shall take, request or solicit the consent of any person to the adoption of a child until the expiration of at least 10 clear days after the date of the birth of the child.

Copy of consent to director

62(4) A copy of the consents required under subsection (2) shall be given to the director at least 30 days prior to the date set for the hearing of the application for adoption or within such shorter period as the judge may allow except as provided in subsection 62(12) and in subsection 74(3) and does not apply to proceedings under section 69.

No adoption where application for declaration of parentage

62(5) Notwithstanding subsection (2), the court shall not grant an order of adoption under this section where the director certifies to the court that he has been served with an application under the Family Maintenance Act by a man that he be declared to be the father of the child in question unless the application is withdrawn or dismissed and all appeals from the dismissal have been exhausted.

Affidavit of execution of consent

62(6) Except in the case of a consent given by the director, an affidavit of execution shall form part of every consent.

Waiver of consent

62(7) A judge may waive the consent of any person required under this Part other than a consent of person to be adopted if the judge is satisfied that

(a) the person whose consent is to be waived

(i) has abandoned or deserted the child,

(ii) cannot be located after all reasonable attempts have been made to find the person,

(iii) has been incapable of caring for the child for a period of time of sufficient duration to be detrimental to the best interests of the child, and remains incapable at the time consent is waived,

(iv) while liable to maintain the child has persistently neglected or refused to do so,

(v) has not had an ongoing parental relationship with the child and a delay in securing a home for the child would be detrimental to the best interests of the child, or

(b) for any valid reasons the consent should be waived

in which case an adoption order with respect to the child may be made without the consent of the person whose consent was waived.

Waiver of consent of person 12 years of age and older

62(8) Where a person to be adopted is 12 years of age or older and is unable to understand or give consent, that person's consent may be waived by the judge.

Wishes of child under 12 to be taken into account

62(9) Where the child's consent is not required under this Part, or is waived under subsection (8), the judge shall, where he considers it to be appropriate and feasible to do so, take into account the wishes of the child.

Withdrawal of consent

62(10) Any person who has given his consent under subsection (2) to the adoption may withdraw the consent by

(a) giving written notice of the withdrawal to the director with respect to adoption under sections 71 and 72; and

(b) filing, in all cases, the notice of withdrawal with the court;

at any time prior to the granting of the order of adoption by the court.

Consent executed outside Manitoba

62(11) Where the laws of a locality outside Manitoba in which a person resides provide for the adoption of children by persons other than their natural parents and that similar results and consequences follow upon an adoption as are provided by the laws of Manitoba, and that written consent of the natural parents or guardian is required for an adoption in a form that is good and sufficient consent to the adoption of the child under the laws of that locality

(a) the consent is as good and sufficient as if it had been executed on the prescribed form within Manitoba;

(b) any consent executed outside the province, by a person who, under section 5, is required to give his consent to the adoption of a child, before any person authorized to take consents in accordance with the laws of the locality where the consent was executed or given, shall be a good and valid consent for the purpose of this Part.

Validity of prior consent

62(12) For the purpose of this section, a consent obtained under subsection 83(2) of The Child Welfare Act, being chapter C80 of the Revised Statutes of Manitoba, is valid and binding for the purposes of this Act, notwithstanding the repeal of that Act; and shall be deemed to be an agreement under section 16.

Substitutional service

63 Where an application is made for an order of adoption under this part, if the judge is satisfied that a parent or guardian of the child cannot be located after reasonable efforts have been made to locate the parent or guardian, as the case may be, the judge may

(a) authorize substitutional service of a copy of the application in such manner as he directs; or

(b) dispense with service of the copy of the application on any person who cannot be located.

Order of adoption

64(1) Where an application for an order of adoption is filed and all the applicable requirements of this Part have been complied with, a judge may, having regard to all the circumstances of the case, issue the order of adoption.

Adoption order on prescribed form

64(2) An order of adoption shall be on a prescribed form, and shall not, except as provided in subsection (3), show the surname of the child prior to adoption, but shall identify the child by the birth registration number of his birth record.

Surname of adopted child

64(3) An adopted child shall, as determined by the adopting parents, either retain the surname under which the child's birth was registered or be given a surname chose from the allowable surnames for registering a child's birth under the Vital Statistics Act.

Effect of adoption order

64(4) Upon the granting of an adoption order under this Part all rights, duties and obligations between the child and his natural parents or his prior adoptive parents and guardians, and all rights of the adopted child to inherit as a lawful lineal descendant of a deceased natural parent under The Devolution of Estates Act, cease to exist under the law, and the relationship newly constituted by the order is valid for all lawful purposes and has the same effect as if the child had been born to the adopting parents.

Exception

64(5) Where the adopting parent has a spouse who is a parent of the person to be adopted and that parent chooses not to apply for the adoption jointly with the adopting parent, the relationship of that parent and of his or her kindred with the adopted person shall continue and shall not be altered in any way by the order for adoption.

Distribution of order

64(6) Subject to subsection (2) every order of adoption made under this Part shall be made in quintuplicate, the original or which shall be kept in the court; and the court shall distribute or cause to be distributed a certified copy thereof

(a) to the adopting parents;

(b) to the director, with exception of orders made under section 69 or 74;

(c) to the Director of Vital Statistics; and

(d) to the agency concerned, with exception of orders made under section 69 or 74.

Distribution of order where child born outside Manitoba

64(7) Subject to subsection (2) every order of adoption made under this Part with respect to a child that was born outside of Manitoba shall be made in sextuplicate, the original of which shall be kept in the court in which it was made; and the court shall distribute or cause to be distributed certified copies of the order in the following manner:

(a) one copy to the adopting parents;

(b) one copy to the director;

(c) two copies to the Director of Vital Statistics who shall in turn forward one copy to the person responsible for recording vital statistics in the place, state or country outside of Manitoba where the child was born; and

(d) one copy to the agency concerned.

Copy of order to Registrar under Indian Act (Canada)

64(8) Where the order under subsection (5) or (6) is with respect to a child who is a member of a band within the meaning of the Indian Act (Canada), a certified copy of the order shall be forwarded to the Registrar under that Act.

Appeal

65 An appeal from a judgment or order of a judge under this Part lies to the Court of Appeal.

Preservation of records

66(1) All records and documents in the office of the director or of an agency related to the granting of an order of adoption shall be confidential and following the granting of the order shall be maintained in a separate file and secured in a safe depository.

Inspection of file on written authorization

66(2) A file maintained by the director or an agency relating to the granting of an order of adoption pursuant to subsection (1) shall not be opened for inspection except on the written authorization of the director or of the executive director of the agency.

Court records

66(3) All records and documents related to the granting of an order of adoption in a court shall be confidential, and no search of such records or making of any copies thereof or extracts therefrom shall be permitted except under an order made by a judge after reasonable notice for that purpose is given to the director.

Court clerk may issue certified copy of order

66(4) Notwithstanding subsection (3), the court may on written request issue a certified copy of an order of adoption or decree absolute of adoption to an adoptive parent or to the adult adoptee or to both, as the case may require; but where the original surname of the child appears on the order of adoption or decree absolute of adoption, the original surname shall be deleted from the certified copy and the birth registration number substituted therefor.

Penalty for taking payment for adoption

67 Subject to section 75, any person other than a lawyer acting for any party involved who receives reasonable remuneration for his professional services who gives or receives or agrees to give or to receive any payment or reward, either directly or indirectly;

(a) in consideration for the adoption of a child under this Part, or

(b) to procure or assist in procuring a child for the purpose of adoption;

is guilty of an offence and liable on summary conviction to a fine of not less than $1,000.00 and not more than $10,000.00 or to imprisonment for a term not exceeding 6 months, or both.

Adoption Placement by Agency

Application for placement

68(1) A husband and wife jointly or a man and a woman jointly who are not married but who are cohabiting together or a single adult may, if they desire to have a child placed in their home with a view to adopting that child, make an application to an agency for that purpose.

Suitability of applicants

68(2) Upon receiving an application under subsection (1), an agency shall ascertain the suitability of the applicants as adoptive parents and upon being satisfied that they are suitable, it shall forward to the director the relevant particulars respecting the applicants and the director shall enter the names and particulars of the applicants in a central registry to be maintained and kept by him.

Applicants may request the director to review

68(3) Applicants who were informed by the agency that they are in the opinion of the agency unsuitable to become adoptive parents may request the director to review the matter.

Director may consult Placement Panel

68(4) Upon receipt of the request under subsection (3) the director may consult the Placement Panel or other appropriate persons on the matter and act according to their recommendation.

Placement subject to approval of director

68(5) An agency may recommend the applicants whose names have been entered in the central registry referred to in subsection (2) for the adoption of a particular child and upon approval of the director the agency may place the child in the home of the applicants.

Agreement regarding adoption placement

68(6) When a child is placed in a home for adoption by an agency, an agreement on a prescribed form shall be entered into with the applicants, setting forth the terms and conditions of the placement and the date of the placement shall be the date on which the agreement was completed.

Removal of child

68(7) Where a child is placed by an agency in the home of a person for adoption, the agency may remove the child from the home at any time prior to an order of adoption being made and the applicants may request the director to review the matter.

Application for adoption order in agency placement

68(8) The persons into whose home a child is placed for adoption under this section may, with the written approval of the agency, apply on a prescribed form to a judge for an order of adoption after the expiration of 6 months from the date on which the child was placed with the applicants for adoption or within such lesser or greater period of time as the agency may authorize.

Surviving spouse may apply for order of adoption

68(9) Where a child is placed for the purpose of adoption in the home of a husband and wife or a man and a woman who are cohabiting and before an application is made for an order of adoption one of them dies, the surviving person may apply under subsection (8) for the order of adoption; and the judge may grant the order of adoption in the name of the applicant and of the deceased person, and in that case the child shall be deemed for all purposes to have been adopted by both the applicant and the deceased person.

Documents to be filed in support of application

68(10) Before granting an order of adoption the judge shall require to be filed in court

(a) the required consents to the adoption;

(b) a copy of the agreement mentioned in subsection (6);

(c) the birth certificate or registration of the live birth of the child;

(d) the order of permanent guardianship or the voluntary surrender of guardianship agreement;

(e) the family and developmental history of the child identified by his adoptive name and birth registration number only;

(f) a summary of the study of the adoptive parents;

(g) the report and recommendation of the agency;

(h) the marriage certificate of the adopting parents who are married except where there is only one applicant who is unmarried;

(i) declaration of commitment of the cohabiting couple;

(j) the authorization of the agency where it authorized the extension or reduction of the time for the making of the application;

(k) nisi and absolute decrees of divorce where the applicant is divorced; and

(l) the death certificate where the application is by a surviving spouse or where a previous marriage of an applicant was terminated by the death of a spouse.

Adoption by Parent

Application

69(1) A person who marries the parent of a child or a man and a woman who cohabit and where one of them is the parent of a child may, together with that parent or alone but with consent of that parent, apply to a judge, on a prescribed form to adopt the child if the child is living with the applicants and is being cared for by them.

Service of copies of application

69(2) An application under subsection (1) shall not be heard by the judge unless a copy thereof is served, at least 30 days prior to the date of the hearing of the application, or within such other period as the court may allow, on

(a) the parent of the child who is not a party to the application; and

(b) such other persons as the judge may direct.

Documents in support of application

69(3) An application under subsection (1) shall be supported by

(a) an affidavit from the applicants setting forth their names, addresses and marital status;

(b) the required consents to the adoption;

(c) the birth certificate or registration of the live birth of the child;

(d) the marriage certificate of the married applicants or declaration of commitment of cohabiting couple;

and where applicable

(e) the death certificate of a deceased parent of the child;

(f) the order of a court of competent jurisdiction relating to the custody of the child;

(g) nisi and absolute decrees of divorce, where the applicant is divorced; and

(h) certification by the director that he has not been served with a notice of application under The Family Maintenance Act by a man that he be declared to be the father of the child.

Report of agency

69(4) The judge hearing an application under this section may request an agency to provide the court with a written report on the applicants and any other matters the judge deems relevant and the agency shall comply with the request.

Order where one applicant dies

69(5) Where pursuant to subsection (1) a person and the parent of a child applied jointly and one of the applicants dies prior to the making of an order of adoption by the judge, the judge may nevertheless grant the order of adoption in the names of both applicants; and in that case the child shall be deemed for all purposes to have been adopted prior to the death of that applicant.

Order for access

69(6) Where the parent of a child makes an application under subsection (1) and the other parent who is served with a copy thereof under clause (2)(a) makes an application for the right to visit the child to the court either as part of the proceeding for the adoption order or as a separate application after the adoption, the judge may by order grant that other parent the right to visit the child.

Order may be subject to terms and conditions

69(7) Upon receipt of an application under subsection (6) the judge may grant the order applied for subject to such terms and conditions as he considers proper.

Extended Family Adoptions

Placement of a child with member of extended family

70(1) Notwithstanding Section 71, a person who has reached the age of majority may place a child with a member of the extended family for the purposes of adoption without the prior notification of the director and without the director's approval.

Application for order of adoption

70(2) An application for an order of adoption under this section shall be made on a prescribed form to a judge of the court having jurisdiction in the matter no earlier than six months and no later than twelve months from the date of placement.

Notice of application for order of adoption

70(3) Any person applying for an order of adoption under this section shall serve a copy of the application at least fourteen days prior to the date fixed for the hearing thereof on

(a) the person whose consent to the adoption is required;

(b) such other person as the judge may direct.

Judge to consider precedent conditions to making an order

70(4) No adoption order may be made under this section unless the judge is satisfied that the child has, for a period of at least six months prior to the date fixed for the hearing of the application, resided with and been in the care and control of the applicant, and that the conduct of the applicant toward the child and the conditions under which the child has lived justify the making of an order.

Judge may waive requirements of subsection (4)

70(5) The court may dispense with the requirements of subsection (4) if satisfied that the best interests of the child are served.

Report of agency

70(6) The judge hearing an application under this section may request an agency to investigate the matter referred to in subsection (4) and provide the court with a written report and the agency shall comply with the request.

Documents in support of application

70(7) An application for an order of adoption under this section shall be supported by:

(a) an affidavit of the applicants on a prescribed form;

(b) the required consents to the adoption;

(c) the birth certificate or registration of the live birth of the child;

(d) the marriage certificate of the married applicants or declaration of commitment of the cohabiting couple;

(e) certification of the child's relationship to the adoptive applicants within the meaning of "extended family" as defined by the Act.

and where applicable:

(f) the report of the agency;

(g) the death certificate of the applicant's spouse, where the applicant is a surviving spouse;

(h) nici and absolute decrees of divorce where the applicant is divorced;

(i) certification by director that he has not been served with a notice of application under The Family Maintenance Act by a man that he be declared to be the father of the child.

Private Adoptions

Who may place

71(1) For the purposes of this section, no person other than the person whose consent to the adoption is required shall place a child for the purpose of adoption.

Placing person to notify agency

71(2) The person who places the child for adoption shall notify the agency having jurisdiction in the area where the child is to be placed of the proposed placement by registered mail not later than ten juridical days prior to the placement, stating

(a) the name and birthdate of the child, or in the case of an unborn child the expected date of birth;

(b) the names and address of the prospective adoptive parents;

(c) the name and address of the person who is placing the child and whose consent is required; and

(d) the address where the child resides, if applicable.

Receiving person to notify agency

71(3) The person who receives the child for adoption shall notify the agency having jurisdiction in the area where the child is to be placed of the proposed placement by registered mail not later than ten juridical days prior to receiving the child into a home for the purpose of adoption, stating

(a) the name and birthdate of the child, or the expected date of birth in the case of an unborn child;

(b) the names and birthdate of the parents of the child;

(c) the names and address of the prospective adopting parents; and

(d) the address where the child resides, if applicable.

Director may waive or extend time for notification

71(4) Where there is a valid reason the director may either waive or extend the time for notification.

Failure to notify is offence

71(5) Any person who contravenes subsection (1) or (2) or (3) commits an offence.

An information may be laid within 6 years of violation

71(6) An information with respect to an offence committed under this section may be laid at any time within six years of the alleged violation.

Investigation by agency

71(7) Upon receipt of a notification under subsection (2) or (3), the agency shall forthwith conduct an investigation into the matter and upon completion of the investigation, may in the best interest of the child approve or not approve the placement of the child and shall notify the parties accordingly.

Supervision of placement following approval

71(8) Where the placement under this section has been approved the agency of the residence of the adoptive parents shall supervise the placement until the issue of an order of adoption.

Procedure after placement not approved

71(9) Where the placement under this section has not been approved, the agency shall, by registered mail, notify both the person placing the child and the person receiving the child of this fact and where the child has been already placed the agency may

(a) cause the child to be returned to the parent of the child, or

(b) enter into a voluntary surrender of guardianship agreement with the parent of the child pursuant to section 16; or

(c) take steps to protect the child in accordance with the provisions of Part III of this Act.

Appeal

71(10) The decision of the agency not to approve placement of a child may be appealed by either the placing or receiving person or both to the Court within 21 days from the day of receipt of the registered letter of notification.

Application for order of adoption

71(11) An application for an order of adoption under this section shall be made on a prescribed form to a judge of the court having jurisdiction in the matter, no earlier than 6 months and no later than 12 months from the date of the placement which has been approved under subsection (8) or within such lesser or greater period of time as the agency may authorize.

Notice of application for order of adoption

71(12) Any person applying for an order of adoption under this section shall serve a copy of the application at least 14 days prior to the date fixed for the hearing thereof on

(a) the agency serving the area in which the applicants reside;

(b) the person whose consent to the adoption is required; and

(c) such other person as the judge may direct.

Documents in support of application

71(13) An application for an order of adoption under this section shall be supported by

(a) an affidavit of the applicants on a prescribed form;

(b) the required consents to the adoption;

(c) the birth certificate or registration of the live birth of the child;

(d) the marriage certificate of the married applicants or declaration of commitment of the cohabiting couple;

(e) the report and recommendation of the agency;

and where applicable

(g) the death certificate of the applicant's spouse where the applicant is a surviving spouse;

(h) nisi and absolute decrees of divorce where the applicant is divorced; and

(i) certification by the director that he has not been served with a notice of application under The Family Maintenance Act by a man that he be declared to be the father of the child.

Order of judge

71(14) Where, after hearing the applicants or the guardian of the child, and the parents of the child as the case may require and after considering the report of the agency, the judge may grant the order of adoption or he may order

(a) that the care and custody of the child be turned over to the parents or guardian of the child; or

(b) that the child be made a ward of the director.

International Adoption

Application for placement

72(1) A person or a husband and wife jointly, who desire to have a child, who is residing in another country, placed in their home with a view to adopting that child, shall notify the director on a prescribed form at least three months in advance of the proposed sponsorship of a child into Manitoba for purposes of adoption.

Provisions of section 71 apply with some exception

72(2) The provisions of subsections 71(4), 71(5) and 71(6) apply here with the necessary changes.

Investigation by director

72(3) Upon receipt of notification under subsection (1) the director shall forthwith conduct or cause to be conducted an investigation into the matter and upon completion of the investigation, may in the best interest of the child approve or not approve the placement of the child and shall notify the applicants accordingly by registered letter.

Supervision by placement following approval

72(4) Where the placement under this section has been approved by the director, the director shall request the agency serving the area of residence of the adoptive applicants to supervise the placement from the day of arrival of the child in the home of the adoptive applicants to the day of issue of an order of adoption and the agency shall comply forthwith with the request.

Appeal

72(5) The decision of the director not to approve the placement may be appealed to the Court by the adoptive applicants within 21 days from the date of receipt of the registered letter of notification.

Application for order of adoption

72(6) An application for an order of adoption under this section should be made as provided under subsection 71(11).

Notice of application for order of adoption

72(7) Any person applying for an order of adoption under this section shall serve a copy of the application at least 14 days prior to the date fixed for the hearing thereof on

(a) the agency serving the area where the applicants reside; and

(b) such other person as the judge may direct.

Documents to be filed in support of application

72(8) Before granting an order of adoption the judge shall require to be filed in court:

(a) an affidavit of the applicants on a prescribed form;

(b) the required consents to the adoption;

(c) the birth certificate or registration of the live birth of the child;

(d) the order of permanent guardianship or the voluntary surrender of guardianship agreement issued in the child's country of origin;

(e) the family and developmental history of the child;

(f) a summary of the study of the adoptive parents;

(g) the report and recommendation of the agency;

(h) the approval of the director;

(i) the approval by the government of the child's country of origin to adoption placement in the home of the applicants;

(j) the marriage certificate of the adopting parents who are married, except where there is only one applicant who is unmarried;

(k) a declaration of commitment of the cohabiting man and woman;

(l) nisi and absolute decrees of divorce where the applicant is divorced;

(m) the death certificate where the applicant is a surviving spouse or where the previous marriage of an applicant was terminated by the death of a spouse; and

where applicable:

(n) the death certificate of the child's natural parents;

(o) certification by Canada Immigration authorities that the child can enter Canada for the purposes of adoption placement in the home of the applicants;

(p) certification by the director where time for notification was waived or extended by the director.

De Facto Adoption

Application

73(1) An application may be made on a prescribed form to a judge for an order of adoption by

(a) a husband and wife jointly or a man and woman who are cohabiting together jointly where

(i) at the time the application is made they are jointly caring for and maintaining the child; and

(ii) either spouse has had care and control of the child for a period of 3 consecutive years.

(b) a person who at the time that application is made:

(i) is caring for and maintaining the child, and

(ii) has had care and control of the child and has maintained the child for three consecutive years.

Consent not required

73(2) No consent of the parents or guardian of a child is required in support of an application under subsection (1).

Notice of application

73(3) A person applying for an order of adoption under this section shall serve a copy of the application at least 30 days prior to the date fixed for the hearing of the application to

(a) the agency serving the area in which the applicants reside;

(b) the parents or guardian of the child; and

(c) such other persons as the judge may direct.

Investigation

73(4) Upon receiving a copy of an application under this section, the agency shall cause an investigation to be made and report to the court on the circumstances surrounding the child.

Documents in support of application

73(5) An application under subsection (1) shall be supported by

(a) an affidavit of the applicants in a prescribed form;

(b) the birth certificate or registration of the live birth of the child;

(c) the consent of the child 12 years of age or over, unless dispensed with by the judge;

(d) the marriage certificate of the applicants who are married except where there is only one applicant who is unmarried or declaration of commitment of the cohabiting couple; and

(e) the report of the agency.

Adoption of an Adult

Conditions for adoption of an adult

74(1) Any adult may be adopted where

(a) the person adopting is older by a reasonable number of years than the person to be adopted; and

(b) the reason for the adoption is acceptable to the judge.

Support during minority to be considered by judge

74(2) Where an application is made to adopt an adult the judge shall take into consideration, in addition to such other considerations as appear to it to be relevant, whether the care, support and control of the person to be adopted has been provided by the person applying to adopt for a reasonable time during the period of minority of the person to be adopted.

No service of the application on an agency

74(3) An order of adoption of an adult may be made under this Part without service of the application for adoption on an agency and without requiring an investigation and report from the agency and the provisions of subs 62(4) and clauses 64(6)(b) and (d) and 64(7)(b) and (d) do not apply to the adoption of an adult.

Documents to be filed in support of application

74(4) An application for an order of adoption under this section shall be supported by

(a) the consent of a person to be adopted;

(b) the birth certificates of the person to be adopted and of the applicant or applicants;

(c) the marriage certificate of the married applicants, except where there is only one applicant who is unmarried;

(d) declaration of commitment of the cohabiting couple;

(e) nisi and absolute decrees of divorce where the applicant is divorced; and

(f) the death certificate of the applicant's spouse where the applicant is a surviving spouse.

Subsidized Adoption

Provision for subsidy

75 Where the director has reason to believe that the interests of a child may best be served by the granting of a subsidy to the adopting parent(s), the director may authorize the payment of a subsidy in such amount and under such conditions as may be prescribed in the regulations.

Post-adoption Services

Post-adoption registry

76(1) The director shall establish a registry and maintain the registry as specified in the regulation for the purpose of

(a) recording information volunteered by or obtained from natural parents, adoptive parents and adult adoptees and their adult siblings;

(b) conveying the information so received or obtained subject to subsection (6), to the natural parents, adoptive parents or adult adoptees and their adult siblings, as the case may be where they voluntarily register with the registry for that purpose or where they advise the director in writing upon contact made with them of their willingness to receive or obtain the information;

(c) registering the wishes of natural parents, adoptive parents and adult adoptees and their adult siblings made known to the registry in writing voluntarily or upon contact as to whether or not they desire to be known to one another and to have personal contact with one another or remain anonymous.

(d) facilitating personal contact subject to subsection (6) between natural parents, adoptive parents and adult adoptees and their adult siblings where they have

(i) voluntarily registered their wishes to that effect,

(ii) agreed in writing to such contact upon being advised that contact is possible,

(iii) received appropriate preparation for personal contact through counselling as required.

Information after death

76(2) Where a person is being sought or about whom information is being sought by another through the registry system is deceased, the director, if he is in possession of that information, shall so inform that other person without divulging any identifying information about the deceased unless

(a) the deceased person prior to his death had indicated to the director that he had no objection concerning the divulging of the information and that fact was recorded in the register; or

(b) the transfer of guardianship to the director was executed by a court order and not by a voluntary surrender of guardianship agreement.

Application of subsecs. (1) and (2)

76(3) Subsections (1) and (2) apply mutatis mutandis, where there is only one parent or one adoptive parent.

Divulging of non-identifying information from register

76(4) The register maintained by the director pursuant to subsection (1) shall not be opened for inspection except by the director or upon his written order; but the director may authorize the giving of non-identifying information to adoptive parents, adult adoptees and their adult siblings or the natural parents of adoptees.

Divulging of non-identifying information from agency files

76(5) The director or the executive director of the agency may authorize the giving of non-identifying information to adoptive parents, adult adoptees and their adult siblings or the natural parents of adoptees.

Divulging of identifying information and personal contact

76(6) Notwithstanding subsection 66(3), the director, or the executive director of an agency with the authorization of the director may

(a) authorize the sharing of identifying information contained in the files maintained by the director or in the registry maintained pursuant to subsection (1) or in the files of an agency relating to the granting of an order of adoption; or

(b) facilitate personal contact; or

(c) do both (a) and (b);

between

(d) an adult adoptee, his adult siblings and his natural parents where they have consented in writing to the sharing of identifying information, or to have personal contact with each other; or

(e) the adoptive parents and the natural parents of an adoptee where the adoptive parents and the natural parents have consented in writing to the sharing of identifying information, or to have personal contact with each other.

PART V

PLACEMENT PANEL

Placement Panel to consist of 5 to 7 members

77(1) There shall be a panel to be known as a Placement Panel, which shall consist of not less than 5 and not more than 7 members.

The members of the Panel appointed by the Minister

77(2) The members of the Panel shall be appointed by the minister on the recommendation of the director from amongst the persons considered to be suitable for the work on the Placement Panel.

Chairman

77(3) The minister may appoint one of the members of the Panel as chairman.

Panel responsible to director

77(4) The Placement Panel is responsible to the director in carrying out its duties and functions under this Act.

Appointment of staff to assist panel

77(5) A coordinator, a secretary and such other employees as may be considered necessary to assist the Panel to carry out its duties and functions under this Act may be appointed as provided in The Civil Service Act.

Term of office

77(6) The members of the Placement Panel shall hold office for a term of two years and thereafter until their successors are appointed; but a member whose term has expired is eligible for re-appointment to the Placement Panel.

Quorum

77(7) Three members of the Placement Panel constitute a quorum for the transaction of business of the panel.

Rules of procedure

77(8) The Placement Panel may make rules governing its procedures.

Remuneration

77(9) A member of the Placement Panel, other than a member who is a civil servant, may be paid such remuneration for carrying out his or her duties as a member of the panel, as the minister may authorize.

Out-of-pocket expenses

77(10) Subject to the approval of the director, a member of the Placement Panel may be paid such out-of-pocket expenses necessarily and reasonably incurred by him or her in the performance of his or her duties as a member of the Panel.

Duties of the Placement Panel

78(1) The Placement Panel may

(a) consider adoption matters referred to the Panel by the director and provide recommendation to the director; and

(b) perform such other duties as may be prescribed by this Act, the regulations, or as may be required by the director.

Powers of Placement Panel

78(2) For the purpose of carrying out its duties under this Act the Placement Panel may

(a) receive all the information on the case it requires in order to form its recommendation;

(b) examine the records respecting the case under its consideration;

or

(c) conduct such inquiries, and carry out such investigations as it deems necessary in discharge of its duties.

PART VI

General

Court may appoint guardian of person

79(1) The court may appoint a guardian of the person of a child and may remove a guardian so appointed with or without appointing another in his place.

Application of subsec.(1)

79(2) Subsection (1) applies only where a guardian is appointed under this Part.

Record of appointments

79(3) Appointments and removals of guardians under subsection (1) shall be in writing signed by the judge, and a record of every appointment or removal shall be made and kept in the office of the court along with the material and papers upon which the appointment or removal was made.

Appeals

79(4) In the case of an order made under this section an appeal lies to the Court of Appeal.

Authority of guardian

79(5) A guardian appointed under this section has unless the court otherwise orders the same powers as are conferred on the director or an agency by section 19 and in addition the guardian is entitled to

(a) the possion and control of real property of the child and the receipts of rents and profits therefrom;

(b) the management of the personal property of the child; and

(c) appear in any court and prosecute or defend any action or proceeding in which the estate of the child is or may be affected.

Application for access

80 In exceptional circumstances a court may upon application, make an order granting any person who had had or ought to have the opportunity to visit a child, the right to visit the child at such times and on such conditions as the court considers appropriate and the court may on a subsequent application by any interested person vary or terminate the order.

Foreign orders

81(1) Where by an order made by a court of competent jurisdiction in any other province or territory of Canada or in any other state or country, lawful parental rights and responsibilities in respect of a child have been legally vested in any persoon, organization, province, state, country or legal representative thereof, the order so made shall for all purposes in Manitoba have the same force and effect as if made under this Act.

Effect of foreign documents

81(2) Where, as a requirement of the making of an order of a court referred to in subsection (1), any statement, consent, declaration or similar document in writing is made by the person, organization, province, state, country or legal representative thereof in whom or in which the lawful parental rights and responsibilities have been legally vested by such order that statement, consent, declaration, or similar document in writing shall for all purposes in Manitoba have the same force and effect as if made under this Act.

Sale of child-offence

82 Any person who gives or receives or agrees to give or to receive any payment or reward either directly or indirectly in consideration for

(a) the sale of a child for any purpose; or

(b) procuring or assisting in procuring the sale of a child for any purpose,

is guilty of an offence and liable on summary conviction to a fine of not less than $1,000.00 or to imprisonment for a term not exceeding 6 months or both.

Regulations

83 For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant Governor in Council may make such regulations and orders as are ancillary thereto and are not inconsistent therewith; and every regulation or order made under, and in accordance with the authority granted by, this section has the force of law; and, without restricting the generality of the foregoing, the Lieutenant Governor in Council may make such regulations and orders not inconsistent with any other provision of this Act;

(a) prescribing forms for the purposes of this Act;

(b) providing for the establishment, designation, regulation, registration and licensing of foster homes, group homes, treatment centres, and other child care facilities;

(c) prescribing the period of time and the conditions under which day care for children may be provided;

(d) prescribing further functions and duties of the director;

(e) prescribing fees, if any, under this Act;

(f) prescribing standards for the operation of government treatment centres;

(g) requiring the submission by agencies and treatment centres of such reports and returns as the director may require;

(h) prescribing duties of the Placement Panel;

(i) prescribing rates and amounts to be paid under sections 12, 13 and 14 and the manner in which the rates and amounts are to be determined;

(j) prescribing the action to be taken by an agency upon receipt of notification of child being in need of protection;

(k) prescribing procedures for the maintenance and operation of the registry established under section 76;

(l) establishing agencies;

(m) prescribing the conditions and rates under which a subsidy may be granted to an adopting parent;

(n) respecting the services to children and families pursuant to section 11.

Repeal

84(1) The Child Welfare Act being chapter C80 of the Revised Statutes is repealed.

Transitional provision

84(2) Notwithstanding subsection (1) where, prior to the coming into force of this Act any action, proceeding or matter was taken or commenced under The Child Welfare Act, it may be continued and completed in accordance with the provisions of that Act and regulations made thereunder, as if this Act had not been enacted.

Order has same effect

85(1) An order of a judge making a child a ward of the Director of Child Welfare under The Child Welfare Act shall have the same effect as if that child was made a ward of the director under this Act.

Wards of Children's Aid Societies

85(2) An order of a judge making a child a ward of a Children's Aid Society under The Child Welfare Act shall have the same effect as if that child was made a ward of the agency under this Act.

Permanent wards become wards of director

85(3) All permanent wards of the Children's Aid Societies become wards of the director on the day of proclamation of this Act but they remain in care of the respective agencies which took place of the former societies.

Reference in Continuing Consolidation

86 This Act may be referred to as chapter C80 in the Continuing Consolidation of the Statutes of Manitoba.

Commencement of Act

87 This Act comes into force on a day fixed by proclamation.